



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 7235898

Date: APR. 29, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a healthcare data analyst, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was working as a healthcare data analyst at [REDACTED]. [REDACTED] The record contains a letter from the director of business and clinical analytics at [REDACTED] indicating that the Petitioner's responsibilities include "developing and maintaining the [REDACTED] data warehouse, engineering and monitoring key performance indicator dashboards, and using analytics to provide strategic direction, gain insight, and identify opportunities."⁵

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that her proposed work "focuses on healthcare research, with a specific concentration on [REDACTED] and general internal medicine. My ultimate goal is to utilize advanced statistical methodology to decipher risk/benefit factors for various health-related issues." In addition, she asserted that another focus of her proposed research is aimed at "predictive factors for healthcare utilization and costs." The Petitioner explained that she intends to use her "expertise in statistical predictive and healthcare business analysis to help U.S. hospitals to provide better quality of care at lower costs." She further stated that her research undertaking involves identifying "predictors for better patients outcomes and greater patient safety;" developing "operational recommendations to decrease length of inpatient stay, emergency department visits and readmission rates;" and proposing "strategic recommendations to improve patient outcomes and satisfaction by identifying predictive factors for patient experience."

The record includes information about the growing demand for data scientists in the healthcare industry and the expanding healthcare analytics market. For example, a June 2018 report from *Medgadget* indicates that the "global healthcare analytics market is estimated to reach \$14.9 billion by 2022" due to rising demand in the healthcare information technology industry. The record therefore supports the Director's determination that the Petitioner's proposed endeavor has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of her work. In addition to the aforementioned information about the growing

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner received a Master of Public Health degree from [REDACTED] University in 2012.

⁵ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about her current position to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

demand for data scientists and the expanding healthcare analytics market, the Petitioner offered a letter of support from [REDACTED], professor of public health services at [REDACTED] University, discussing the potential benefits of her proposed research and how it stands to advance her field. [REDACTED] asserted that the Petitioner's proposed "work in the research field will definitely promote the improvement of health outcomes while reducing the enormous healthcare costs associated with serious chronic conditions such as chronic kidney disease and cerebrovascular disease." In addition, [REDACTED] senior director of patient service operations at [REDACTED] stated that the Petitioner's proposed research stands "to shed light on alternative, innovative, and cost-effective solutions to improve . . . patient safety and clinical outcomes." The record also includes documentation indicating that the benefit of the Petitioner's research undertaking has broader implications, as the results are disseminated to others in the field through medical journals and conferences.⁶ As the Petitioner has documented both the substantial merit and national importance of her proposed research, she meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of her curriculum vitae, academic credentials, medical certifications, professional memberships, published articles, and conference presentations. She also offered evidence of articles that cited to her published work, and letters of support discussing her past research projects.

The Petitioner contends on appeal that her "education, skills, knowledge, and record of past success in related field, as well as her plan of future research and documented progress towards achieving the goal, demonstrate that she is well positioned to execute and advance the proposed endeavor." For the reasons discussed below, the evidence is insufficient to demonstrate that she is well positioned to advance her proposed research under *Dhanasar*'s second prong.

In letters supporting the petition, several references discussed the Petitioner's medical research projects at [REDACTED].⁷ For example, regarding the Petitioner's research involving risk factors for [REDACTED] progression, [REDACTED] associate professor of medicine at [REDACTED] stated that the Petitioner "carried out an analysis on the relationship between illicit drug use and chronic [REDACTED] function decline" and revealed an "association between lifetime opiate and cocaine use and greater odds of having reduced [REDACTED] function and/or [REDACTED] damage." [REDACTED] indicated that the Petitioner's "analysis proved the necessity of leveraging resources to address this potentially modifiable risk factor for [REDACTED]." The record includes a July 2019 Google Scholar citation report indicating that the aforementioned study published in *American Journal of Nephrology* has received eight citations since its publication in 2016.⁸ The Petitioner, however, has not demonstrated that this number of citations constitutes a record of success or a level of interest in her work from relevant parties sufficient to meet *Dhanasar*'s second prong.

[REDACTED] also noted that the Petitioner has contributed "to several successful research grant proposals" funded by the National Institutes of Health. The Petitioner contends that this funding shows

⁶ For instance, [REDACTED] indicated "[o]ur team and [the Petitioner] aim to publish these results and share our findings with other peers in the healthcare industry."

⁷ While we discuss a sampling of these letters, we have reviewed and considered each one.

⁸ This study was coauthored by [REDACTED]

the “U.S. Government’s interest and investment in her research.” In *Dhanasar*, the record established that the petitioner “initiated” or was “the primary award contact on several funded grant proposals” and that he was “the only listed researcher on many of the grants.” *Id.* at 893, n.11. Here, the record does not show that the Petitioner (rather than her professors at [REDACTED]) were mainly responsible for obtaining governmental funding for her research projects.

In addition, [REDACTED] a nephrologist and epidemiologist at University Medical Center of [REDACTED],⁹ stated that the Petitioner worked with her as lead biostatistician in the [REDACTED]. [REDACTED] asserted that the Petitioner “played a central role in our team’s research on the relationship between [REDACTED] administration patterns and anemia management among hemodialysis patients.” She further indicated that the Petitioner’s analysis “showed that maintenance [REDACTED] strategies were associated with reduced use of the erythropoietin stimulating agents (ESA) and lower overall mortality,” but the Petitioner has not shown that these findings have been implemented, utilized, or applauded by others in the field.¹⁰

With respect to the Petitioner’s research relating to the Dietary Approaches to Stop Hypertension (DASH) diet and its benefits for [REDACTED] function, [REDACTED] associate professor of public health at [REDACTED] University,¹¹ asserted that the Petitioner “found that better accordance with the DASH diet is associated with a 40% lower risk of rapid [REDACTED] function decline among hypertensive individuals, yet not among non-hypertensive individuals.” [REDACTED] further noted that the Petitioner’s work “revealed that the association existing solely among hypertensive patients may be explained by the beneficial effect of the DASH diet specifically on vascular injury and endothelial dysfunction.”¹² Regarding the Petitioner’s work involving the [REDACTED] study, [REDACTED] stated that the Petitioner identified the “association between a [REDACTED] Given her results, clinical guideline bodies can consider evaluating the overall evidence on [REDACTED] protective diets for the preservation of [REDACTED] function.”¹³ [REDACTED] however, does not offer specific examples of how the Petitioner’s findings from these studies have affected clinical guidelines or otherwise constitute a record of success in her field.

As it relates to the citation of Petitioner’s other work, the information from Google Scholar indicates that her four highest cited articles in *Current Opinion in Nephrology and Hypertension* (2014), *Blood Purification* (2016), *BMC Nephrology* (2014), and *Journal of Diabetes and its Complications* (2017) each received 26, 25, 24, and 21 citations, respectively. The Petitioner also provided 2017 and 2018 data from Clarivate Analytics regarding baseline citation rates and percentiles by year of publication for various research fields, including “Clinical Medicine.” This documentation from Clarivate

⁹ [REDACTED] previously worked with the Petitioner during her postdoctoral fellowship in internal medicine at [REDACTED]

¹⁰ The aforementioned Google Scholar citation report reflects that the article in *Nephrology Dialysis Transplantation* reporting their findings has been cited eight times since its publication in 2016.

¹¹ [REDACTED]’s curriculum vitae indicates that she has both a Master of Health Science degree in biostatistics and a Ph.D. in nutritional epidemiology from [REDACTED].

¹² The Petitioner’s Google Scholar citation report indicates that her article in *Journal of Renal Nutrition* reporting these findings has received six citations since its publication 2017.

¹³ The citation information from Google Scholar reflects that the Petitioner’s article in *American Journal of Nephrology* reporting these findings has received 16 citations since its publication 2016.

Analytics states that “[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers. Consequently, citation rates should not be interpreted as representing the central tendency of the distribution.” Regardless, the Petitioner has not demonstrated that the number of citations received by her articles reflects a level of interest in her work from relevant parties sufficient to meet this prong.

Furthermore, while the Petitioner’s Master of Public Health degree renders her eligible for the underlying EB-2 visa classification, the Petitioner has not shown that her academic accomplishments by themselves are sufficient to demonstrate that she is well positioned to advance her proposed endeavor.

The evidence indicates that the Petitioner has conducted, published, and presented research while working at [REDACTED], but she has not shown that this work renders her well positioned to advance her proposed healthcare research. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance her proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual’s progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not shown that her published and presented work has served as an impetus for progress in the medical field, that it has affected diagnostic or treatment protocols for diseases, or that it has generated substantial positive discourse in the medical community. Nor does the evidence otherwise demonstrate that her work constitutes a record of success or progress in the healthcare or biomedical research fields. As the record is insufficient to show that the Petitioner is well positioned to advance her proposed research endeavor, she has not established that she satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver’s Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that she is eligible for a waiver due to her education and experience in healthcare research, the importance of her field, and her research accomplishments. However, as the Petitioner has not established that she is well positioned to advance her proposed endeavor as required by the second prong of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.